

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DERRICK WHEATT, et al.,) CASE NOs.: 1:17-CV-0377
) and 1:17-CV-0611
Plaintiffs,)
) JUDGE JAMES S. GWIN
v.)
CITY OF EAST CLEVELAND, et al.,) MAGISTRATE JUDGE WILLIAM H
) BAUGHMAN, JR.,
Defendants.)
)

**EAST CLEVELAND'S 60(d) MOTION TO SET ASIDE JUDGMENT FOR FRAUD ON
THE COURT WITH REQUEST FOR HEARING¹**

NOW Comes the East Cleveland Defendants, by and through their attorney of record; and hereby moves this honorable Court to set aside the judgment against them due to a fraud having been perpetrated upon the Court.

As more fully set forth in the Memorandum in Support, this Court should order a Hearing to determine whether the decision in the within case should be set aside due to fraud upon the Court as set forth by FRCP 60(d).

Respectfully submitted,

/s/ Willa M. Hemmons
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Counsel for the City of East Cleveland, Vincent K.
Johnstone and Michael C. Perry

¹ Defendants of the City of East Cleveland Vincent K. Johnstone and Michael C. Perry are referred to hereinafter as the East Cleveland Defendants.

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Defendants.)

**MEMORANDUM IN SUPPORT OF EAST CLEVELAND DEFENDANTS'
MOTION FOR A RULE 60(d) HEARING**

On February 10, 1995, Clifton Hudson (19-years old) was shot five times in the back as he tried to escape an ambush

Plaintiffs Derrick Wheatt, Eugene Johnson and Laurese Glover were identified by three eyewitnesses as suspects, arrested, charged and convicted of the murder of Clifton Hudson. On January 18, 1996 Plaintiff Laurese Glover was sentenced to 15 years to life. Plaintiffs Derek Wheatt and Eugene Johnson were sentenced to 18 years to life. See Doc. # 1 at ¶ 128.

Premised primarily upon the “recantation” of Tamika Harris, the state’s primary witness, on December 5, 2014, the *East Cleveland Three* filed a *Motion for New Trial* seeking relief under Crim.R. 33(A) and *Brady v. Maryland* pursuant to the theory of newly discovered evidence, technological advancements in gunshot residue testing; and allegations that prior to, during and after the trial, the City Defendants withheld exculpatory evidence.

On March 26, 2015 Cuyahoga County Judge Nancy Margaret Russo in Case No.: CR-95-324431-B granted the *Motion for a New Trial* which was affirmed by the Eighth District Court of Appeals on May 5, 2016. Thereafter, on June 27, 2016 the Cuyahoga County Prosecutor’s Office filed its *Motion to Dismiss Without Prejudice*. Significantly, at no time

during any post-trial procedures, including the new trial proceedings were the City Defendants called upon as witnesses.

The *East Cleveland Three* brought an eleven-count Complaint alleging that the City Defendants deprived them of their constitutional rights.

On November 15, 2018, a Jury entered a verdict against the late Michael Perry in the amount of \$11.5 Milllion and Vincent Johnston in the amount of \$4.5 Million. The Court had also dismissed without prejudice the indemnification claim, as that claim was not yet ripe. See Doc. # 124 at p. 38.

However, on or about December 19, 2019, James Avery, a purported investigator for Rosemary Johnson, mother of Plaintiff Eugene Johnson, appeared in the East Cleveland Law Offices and complained that he had not been paid the \$25,000 he had been promised to effectuate the recantation of key Plaintiff Witness, Tameka Harris.

Rather than merely submit an Affidavit to verify such fraud on the Court, the East Cleveland Defendants respectfully request that this Honourable Court set a hearing on Mr. Avery's averments.

Respectfully submitted,

/s/ Willa M. Hemmons
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CERTIFICATE OF SERVICE

A true and accurate copy of this Motion was electronically filed with the Court on this 3rd day of January, 2020, and that by operation of this Court's electronic notification system a copy thereof is made available to all registered parties. In addition, a courtesy copy of this filing has been served by email to Howard S. Rabb, Esq., bankruptcy counsel for Defendant Michael Perry, at: hrabb@dworkenlaw.com.

/s/ Willa M. Hemmons
Attorney for City Defendants